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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DIANE CRUMP-RICHMOND, Plaintiff, v. FRANK ARAMBULA; and CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada, Defendants.	CASE NO. 2:05-cv-1309-RLH(GWF)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COME NOW, Defendants Clark County School District ("District") and Frank Arambula, by and through their counsel, and hereby file their Motion for Summary Judgment. This Motion is based upon the following Memorandum of Points and Authorities, the supporting exhibits attached hereto and the other papers and pleadings on file with the Court in this matter along with any argument allowed by the Court.

DATED this 30th day of October, 2006.

CLARK COUNTY SCHOOL DISTRICT
Office of the General Counsel

By: /s/
S. SCOTT GREENBERG
Nevada Bar No. 4622
5100 W. Sahara Ave.
Las Vegas, Nevada 89146
Attorney for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises out of Plaintiff's arrest by Officer Frank Arambula at Desert Pines High School (hereinafter "Desert Pines") on January 13, 2005. Plaintiff's complaint alleges Section 1983 claims of excessive force and false arrest against Officer Arambula, as well as Monell claims against the District, and a state law tort claim for assault and battery. Exhibit 1. Discovery is closed and this matter is ripe for summary judgment for the reasons discussed below.

II. STATEMENT OF FACTS

Officer Arambula is a Clark County School District police officer. Exhibit 1 at paragraph 5. There had been fights and other types of problems at Dessert Pines requiring law enforcement; therefore, extra school police officers regularly patrolled the school at student dismissal time. Exhibit 2 at p. 15, ll. 6-17; Exhibit 3 at p. 71, ll. 11-24. Officer Arambula and his partner were patrolling the school near dismissal time on January 13th and they stopped a car in the parking lot. Exhibit 2 at p. 21, ll. 4-18. Although unknown to the officers, the driver of the car was a former student named Otis.

Plaintiff was a teacher at Desert Pines. Exhibit 1 at paragraph 7. On January 13, 2005, Plaintiff was preparing to go from Desert Pines to UNLV for a dance recital. Exhibit 4 at p. 17, l. 1-15. Plaintiff was packing her car in the parking lot with costumes and other things for the recital. Exhibit 4 at p. p. 24, ll. 8-22; p. 64, ll. 6-23. One of Plaintiff's students saw the police stop the car driven by Otis. The student went to Plaintiff,

who was walking to her car, and told Plaintiff "I think I got Otis in trouble, and the police stopped him." Exhibit 4 at p. 65, ll. 18-22.

Plaintiff then went to where the police had stopped Otis' car. Plaintiff walked to the front of Otis' car. Exhibit 4 at p. 69, ll. 1-8. Plaintiff failed to move away from the stopped car when Officer Arambula told her to do so. Plaintiff was arrested for obstructing a police officer and handcuffed. The school principal arrived on the scene and after a short discussion, Officer Arambula let Plaintiff go with a warning. Exhibit 3 at p. 28, l. 17 - p. 29, l. 5; Exhibit 4 at p. 105, ll. 1-11. Plaintiff was handcuffed for approximately 5 minutes. Exhibit 4 at p. 60, ll. 22-23.

III. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

The following is a statement of the material facts not in dispute solely for the purposes of supporting this motion:

1. Plaintiff was a teacher at Desert Pines. Exhibit 1 at paragraph 7. On January 13, 2005, she was taking the dance team to a recital at UNLV. Exhibit 4 at p. 17, l. 1-15.

2. Officer Arambula and his partner were patrolling Desert Pines on January 13th, when they stopped a vehicle in Desert Pines' parking lot. Exhibit 2 at p. 17, ll. 11-21; p. 21, ll. 4-18.

3. The car stopped by Officer Arambula and his partner was being driven by a former student named Otis. Exhibit 4 at p. 69, ll. 1-8.

4. Plaintiff was packing her car with costumes and other things for the recital. Exhibit 4 at p. 24, ll. 8-22; p. 64, ll. 6-23. One of Plaintiff's students told Plaintiff she thought she had gotten Otis in trouble and the police had stopped him. Exhibit 4 at p. 65, ll. 18-22.

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5. Plaintiff went to the front of Otis' car which had been stopped by the police. Exhibit 4 at p. 69, ll. 1-8. As Plaintiff was walking towards the car, she saw the officers. Exhibit 4 at p. 80, l. 23 - p. 81, l. 5.

6. Officer Arambula asked Plaintiff to move away from the stopped car twice. Plaintiff failed to move away. Exhibit 2 at p. 26, l. 12 - p. 27, l. 25.

7. Plaintiff admits that when Officer Arambula touched her she tried to pull away from him. Exhibit 4 at p. 87, ll. 8-13.

8. Officer Arambula informed Plaintiff she was being arrested for obstructing a police officer. Officer Arambula handcuffed Plaintiff. Exhibit 4 at p. 85, ll. 5-9.

9. Plaintiff was handcuffed for about 5 minutes. Officer Arambula took the handcuffs off Plaintiff and let her go with a warning. Exhibit 4 at p. 105, ll. 1-11; p. 60, ll. 22-23.

IV. LEGAL ANALYSIS

A. STANDARD FOR A MOTION FOR SUMMARY JUDGMENT

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56©. The burden of demonstrating the absence of a genuine issue of material fact lies with the moving party, Zoslaw v. MCA Distr. Corp., 693 F.2d 870, 883 (9th Cir. 1982), and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. Baker v. Centennial Ins. Co., 970 F.2d 660, 662 (9th Cir. 1992). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. S.E.C. v. Seaboard Corp., 677 F.2d 130, 1306 (9th Cir. 1982).

Once the moving party presents evidence that would call for judgment as a matter of law at trial if left uncontroverted, the respondent must show by specific facts the existence of a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

> There is no genuine issue of fact for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.

Id. at 249-50 (citations omitted). The nonmoving party may not simply rely on his allegations to defeat summary judgment. Vandermeer v. Douglas County, 15 F.Supp.2d 970, 974 (D. Nev. 1998).

It must be remembered that summary judgment is a necessary and useful procedure which supports the interests served by the rules of civil procedure. The Supreme Court has explained that the "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 322, 323-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

B. PLAINTIFF'S SECTION 1983 CLAIMS

1. Plaintiff's False Arrest Claim

Plaintiff's second claim for relief asserts her "inappropriate[] handcuffing" violated her "liberty interest" under the Fourteenth Amendment. Exhibit 1 at paragraphs 20-22. Plaintiff was handcuffed when she was being arrested by Officer Arambula. Statement of Material Facts not in Dispute, No. 8. This

was a "seizure" under the Fourth Amendment. Graham v. Connor, 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) (claims arising from an "arrest, investigatory stop or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment"). There is no Fourteenth Amendment right in the context of a police seizure. Brew v. City of Emeryville, 138 F.Supp.2d 1217, 1223 (N.D. Calif. 2001). Therefore, Plaintiff's claim of a Fourteenth Amendment violation fails as a matter of law.

A claim of an unlawful seizure by police is analyzed under the Fourth Amendment. Id. There should be no dispute that a police officer with probable cause to arrest an individual may legally do so. This is what occurred in this case. Officer Arambula had probable cause to arrest Plaintiff for obstructing a police officer pursuant to NRS 197.190 which prohibits "willfully hinder[ing], delay[ing], or obstruct[ing] any public officer in the discharge of his official powers or duties . . . ."

Officer Arambula and his partner initiated the traffic stop when the car entered the school parking lot and stopped in a fire lane parked against traffic. Exhibit 2 at p. 21, ll. 4-11. The car was also missing a front license plate. Id. Officer Arambula testified that it was not uncommon for that particular model car to come back as stolen when checked. Exhibit 2 at p. 27, l. 20 - p. 28, l. 1. The officers were patrolling the school parking lot because most of the incidents at the school, such as fights, occurred there. Exhibit 2 at p. 23, 1-9. The driver was not able to produce all the documentation being requested and was acting nervous. Exhibit 2 at p. 24, 5-16. Officer Arambula was covering his partner who was engaged with the driver. Exhibit 2 at p. 25,

ll. 1-13. This is when Plaintiff approached the stopped car. Exhibit 2 at p. 25, l. 23 - p. 26, l. 9.

Courts recognize that traffic stops are inherently dangerous. See Michigan v. Long, 463 U.S. 1032, 1049, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) ("Roadside encounters between police and suspects are particularly hazardous"). Officer Arambula was engaged in a traffic stop with a driver who was unknown and it was unknown why he was at the school. The reason Officer Arambula and his partner were at the school at that time was because it had serious incidents requiring additional law enforcement personnel.[1] Now Plaintiff was walking up to the car during the traffic stop. Any traffic stop is a potentially dangerous situation and Officer Arambula appropriately attempted to have Plaintiff step back from the stopped car. She did not do so. Exhibit 2 at p. 26, l. 13 - p. 27, l. 14. Officer Arambula told Plaintiff she was obstructing and attempted to guide her away from the car. Exhibit 2 at p. 28, ll. 22-25. Plaintiff made a movement Officer Arambula perceived as attempting to pull her hand away from him. Exhibit 2 at p. 29, ll. 1-3. Plaintiff admits that she tried to pull away from Officer Arambula. Statement of Material Facts not in Dispute, No. 7. At the time, Officer Arambula believed Plaintiff had not complied with his instructions to step back and began to arrest Plaintiff which included handcuffing. Exhibit 2 at p. 29, l. 24 - p. 30, l. 2.

To make out a Section 1983 claim for an unlawful arrest, the plaintiff must "demonstrate that there was no probable cause to

[1] One officer was assigned to Desert Pines. Officer Arambula and his partner were additional personnel that would patrol the school near dismissal time. Exhibit 2 at p. 22, ll. 6-17.

arrest . . . ." Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998). Probable cause exists when, under the totality of the circumstances known to the officer, a prudent person would believe the suspect committed a crime. Dubner v. City and County of San Francisco, 266 F.3d 959, 964 (9th Cir. 2001). When an individual does not comply with an officer's instructions to move back from a traffic stop, the elements of obstructing a police officer are met. See In re Muhammed, 95 Cal.App.4th 1325, 116 Cal.Rptr.2d 21 (Ct.App.Calif 2002); State of Washington v. Lalonde, 665 P.2d 421, 35 Wn. App. 54 (Wash.App. 1983) (individual that approached officer arresting suspect to supposedly "calm things down" guilty of obstructing police officer as he refused to back away as instructed by officer). Probable cause existed to arrest Plaintiff when she failed to move back as instructed by Officer Arambula; therefore, there can be no false arrest as a matter of law.

2. Plaintiff's Excessive Force Claim

Plaintiff's excessive force claim is based upon the assertion that Officer Arambula "twisted [Plaintiff's arm] and awkwardly pinned it behind [Plaintiff's back]" while arresting her and when asked "to loosen his grip, [Officer Arambula] retaliated by tightening his grip." Exhibit 6 at Response to Interrogatory No. 13 at p. 4. Plaintiff testified at her deposition that Officer Arambula stated he was arresting her and then took her arm "and he twisted it behind my back." Exhibit 4 at p. 86, ll. 16-17. Plaintiff admits that she was attempting to pull her arm away from Officer Arambula when he was arresting her. Statement of Material Facts not in Dispute, No. 7.

An excessive force claim by an individual stopped or arrested by police is analyzed under the Fourth Amendment's "objective reasonableness" standard. Graham v. Connor, 490 U.S. 386, 388, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Arresting an individual "necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Id. at 396. Each case must be judged on its own facts and circumstances which include the severity of the offense, the suspects posed threat and whether the suspect is resisting or attempting to flee. Id. The "reasonableness" of a particular use of force must be judged from the perspective of the officer at the scene and not the "20/20 vision of hindsight." Id. The "reasonableness" determination must take into account that police officers are required to make split second decisions about the use of force that is necessary during "tense, uncertain and rapidly evolving" situations. Id. at 397. "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chamber's" violates the Fourth Amendment. Id. (citing Johnson v. Glick, 481 F.2d 1028, 1033 (2nd 1973)).

Taking Plaintiff's allegations as true, Officer Arambula at most twisted her arm behind her back to effectuate her arrest and had a tight grip on her arm. And this is while Plaintiff admittedly was attempting to pull her arm away from Officer Arambula. The law recognizes that force may be used - it is only excessive force that is unlawful. Officer Arambula used the force necessary to put Plaintiff's arm behind her back for handcuffing. He did not strike Plaintiff in any way, did not take her down or use anything other than his own hands to move Plaintiff's arms. Reasonable force is lawful and given Plaintiff's admission that she

was attempting to pull away from Officer Arambula, the minimal allegations of excessive force must fail as a matter of law.

3. Qualified Immunity

Pursuant to Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), qualified immunity involves a two step analysis. Initially, the Court must determine whether the facts asserted show that a constitutional violation occurred. Id. at 201. Defendants submit that as set forth above, Plaintiff's claims of false arrest and excessive force do not even support the conclusion that a constitutional violation occurred. However, if the Court concludes otherwise, the Court must then proceed to the second step of the qualified immunity analysis which is to determine whether the officer violated a clearly established constitutional right. Id. The "clearly established" analysis is not to be reviewed as a broad general proposition but instead in the narrower view of whether the officer's actions in light of the specific particulars of the case were reasonable. Id. at 201-02. Saucier states:

> The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.

Id. at 202.

As to the excessive force claim, Saucier is much like the case at bar. The plaintiff in Saucier claimed that the defendant unnecessarily shoved him violently into a van to get him away from the scene where the Vice-President was speaking. Id. at 208. Assuming the shove was excessive, the Court still found qualified immunity was proper because the defendant's actions were within the

scope of what a reasonable officer would have done. Id.

In the case at bar, Officer Arambula had to put Plaintiff's arm behind her back for handcuffing. Qualified immunity is viewed from the perspective of the defendant officer. Id. In this case, Officer Arambula's perspective was that Plaintiff had not complied with his instructions to move away and Plaintiff had tried to pull away from him. All that Plaintiff alleges is that her arm was twisted (which is obviously necessary to get it behind her back) and Officer Arambula tightened his grip during the encounter. In light of the context of this case, Officer Arambula cannot be held liable even if he used some additional force to accomplish handcuffing Plaintiff.

"The reasonableness of the officer's belief as to the appropriate level of force should be judged from that on-scene perspective" and the officer's actions are justified even when a reasonably mistaken belief that more force than in fact is needed is made by the officer. Id. at 205. It is easy to second guess police officers who necessarily need to make quick decisions and the Supreme Court has made clear that qualified immunity protects all but the unreasonable actions of police.

> The deference owed officers facing suits for alleged excessive force is not different in some qualitative respect from the probable cause inquiry in Anderson. Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances, for example, and in those situations courts will not hold that they have violated the Constitution. Yet, even if a court were to hold that the officer violated the Fourth Amendment by conducting an unreasonable, warrantless search, Anderson still operates to grant officers immunity for reasonable mistakes as to the legality of their actions. The same analysis is applicable in excessive force cases, where in addition to the deference officers receive on the

> underlying constitutional claim, qualified immunity can apply in the event the mistaken belief was reasonable.

Id. at 206. Plaintiff's allegations, like those in Saucier, cannot defeat qualified immunity because even if the force used was in some manner excessive it clearly was not beyond the bounds of what a reasonable officer could have believed was necessary under the particular circumstances of this case.

The same analysis applies to Plaintiff's false arrest claim. It is clearly appropriate to arrest a person for obstruction when they fail to comply with instructions to move away from a traffic stop. Upon Plaintiff's failure to back away from the scene, Officer Arambula could have reasonably believed there was probable cause to arrest Plaintiff. As such, qualified immunity also defeats Plaintiff's false arrest claim.

4. Municipal Liability

a. Monell Liability

As a municipal employer, the District is not subject to damages under 42 U.S.C. § 1983 unless the municipality itself caused the constitutional deprivation; liability for damages is not imposed under the theory of *respondent superior*. Monell v. Dept. of Social Services, 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). In Monell, the Court Stated:

> a local government may not be sued for any injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983.

Id. at 694. Municipal liability may be established in one of three

ways: (1) establishing the constitutional violation occurred pursuant to a custom or policy of the municipal defendant; (2) establishing the constitutional violation was caused by a final policymaking official; or (3) establishing the subordinate's constitutional violation was ratified by a final policymaking official. Gillette v. Delmore, 979 F.2d 1342, 1347 (9th Cir. 1992). A prerequisite to municipal liability under Monell is that there be an underlying Section 1983 violation. Quintanilla v. City of Downey, 84 F.3d 353, 355 (9th Cir. 1996). As demonstrated above, Plaintiff did not suffer any violation of her constitutional rights; therefore, her Monell claim must also fail. Id.

Moreover, Plaintiff cannot establish a Monell claim under any of its three theories. Plaintiff does not claim Officer Arambula was a final policymaking official for the purposes of Monell but has alleged he was acting pursuant to a custom or policy and that the District ratified his actions. Exhibit 1 at paragraph 29. Plaintiff claims the following support her claim that the District had a custom or policy which violated her rights:

> - Plaintiff tried to contact Lt. Young about an investigation into the matter however he never contacted her back and she was not informed that any corrective action was taken;
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> - at the time of the incident Officer Arambula "was training another police officer that day and was acting in a supervisory capacity," and was not disciplined; and
>
> - Plaintiff asserts Sgt. Russo told the school principal that Officer Arambula acted appropriately and should have arrested Plaintiff.

Exhibit 6 at Response to Interrogatory No. 9 at p. 2. Plaintiff claims the following, in addition to the above 3 factors, supports her claim that the District ratified Officer Arambula's actions:

> - Plaintiff met with Jennifer Powers of the District's risk management office on February 15, 2005, to discuss the matter and after she told Ms. Powers she had an attorney Ms. Powers would not continue the meeting.

Exhibit 6 at Response to Interrogatory No. 10 at p. 3.

To maintain a cause of action under Section 1983 for damages against the District, Plaintiff's initial burden is to demonstrate that the conduct she complains of was carried out pursuant to official District policy or custom. A "policy" is a decision by a municipality's duly constituted legislative body. Board of County Commissioners v. Brown, 520 U.S. 397, 403, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997). A "custom", while not having been formally approved by an appropriate decision maker, is a practice so widespread as to have the force of law. Id. at 404. The policy or custom must have lead to the alleged constitutional violation. Oviatt v. Pearce, 954 F.2d 1470, 1477-78 (9th Cir. 1992). A single incident or unconstitutional act by a non-policymaking employee cannot establish the existence of a custom or policy. Davis v. City of Ellensburg, 869 F.2d 1230, 1233 (9th Cir. 1989).

There is absolutely no evidence of any policy or custom of excessive force or unlawful arrests for Plaintiff to rely upon. In fact, all the assertions in Plaintiff's interrogatory answers listed above, except for the assertion Officer Arambula was acting as a training officer, occurred after the fact so they simply cannot evidence a policy or custom that caused a constitutional violation to Plaintiff on January 13, 2005. And while Officer Arambula was acting as a training officer, that is of no relevance. Plaintiff does not claim Officer Arambula is a final policymaker and municipal liability is not premised upon respondeat superior.

Plaintiff also cannot support a theory of ratification. Ratification requires that a final policymaker "approve the subordinate's decision and the basis for it before the policymaker will be deemed to have ratified the subordinate's discretionary decision." Gillette, 979 F.2d at 1348. Plaintiff's reference to her meeting with Jen Powers is of no support for Plaintiff's claim. Ms. Powers was employed by the District's risk management department which processes worker's compensation claims. Exhibit 7. Ms. Powers was simply doing her job to process Plaintiff's worker's compensation claim. Id. Ms. Powers did not "approve" Officer Arambula's actions and she is not a final policymaker as required for ratification to occur. Plaintiff's reference to Sergeant Russo is also without merit. Officer Arambula filed a "Use of Force" report as required. Exhibit 8. Within the report, Officer Arambula's description of the incident was reviewed by his sergeant, Sergeant Russo, and then the sergeant's review was reviewed by his lieutenant, Lieutenant Young. Id. Plaintiff is apparently referring to Sergeant Russo's comment that if a use of force occurs the suspect should be charged with the criminal offense being committed. Id. at p. 2. Lieutenant Young clarified in his review on the report and also testified at his deposition that there is no policy that an arrest is mandatory and the officer has the discretion to "release" an individual if he chooses to do so. Id; Exhibit 5 at p. 13, l. 3 - 14, l. 19. Sergeant Russo did not "approve" Officer Arambula's actions (in fact he disapproved of not charging Plaintiff) and he is not a final policymaker as required for ratification to occur.

b. Failure to Train Allegations

Plaintiff's fourth cause of action asserts the District failed to train its officers so they "would not use excessive force on school teachers who approach stopped vehicles . . . ." Exhibit 1 at paragraph 35. In her interrogatory answers, when asked to identify the basis for her failure to train allegation, Plaintiff simply referred to her answer regarding her Monell custom/policy claim. Exhibit 6 at Response to Interrogatory No. 16 at p. 4. That interrogatory response merely asserts:

> - Plaintiff tried to contact Lt. Young about an investigation into the matter however he never contacted her back and she was not informed that any corrective action was taken;
>
> - at the time of the incident Officer Arambula "was training another police officer that day and was acting in a supervisory capacity," and was not disciplined; and
>
> - Plaintiff asserts Sgt. Russo told the school principal that Officer Arambula acted appropriately and should have arrested Plaintiff.

Exhibit 6 at Response to Interrogatory No. 9 at p. 2.

A Section 1983 claim asserting inadequate police training was recognized in City of Canton v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). However, such a claim requires a high degree of proof. Failure to train claims are only cognizable when the evidence shows there was deliberate indifference on the part of the municipality. Id. at 388. The failure to train will only amount to an unlawful policy where "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need." Id. at 389-90. Deliberate indifference

is a stringent standard of fault requiring that the defendant "disregarded a known or obvious consequence of [its] action." Board of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 407, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997).

Plaintiff has not identified any alleged training deficiency.[2] In fact, her interrogatory response identifying the basis for her failure to train claim does not even mention any training issues. Just as with the policy/custom theory under Monell, the incident itself is insufficient to support a failure to train claim. There is simply no basis for a Section 1983 failure to train claim.

5. Punitive Damages Request

Plaintiff has made a request for punitive damages under her Section 1983 claims. Exhibit 1. Punitive damages may not be awarded against the District; therefore, any such request must be dismissed. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981); Herrera v. Las Vegas Metro Police Dep't, 298 F.Supp.2d 1043, 1055 (D. Nev. 2004).

Punitive damages may be awarded against an individual Section 1983 defendant; however, there is no basis for such in the case at bar. Punitive damages are only recoverable "when the defendant's conduct is shown to be motivated by evil motive or intent or when it involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983).

While Defendants submit Officer Arambula's actions were proper, even if the Court determines there are triable issues, at

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[2] Plaintiff did not disclose any expert witness for any issues, including police training.

most the issues are whether Officer Arambula acted reasonably. As for the arrest, Plaintiff knowingly approached right up to the car during a traffic stop with the knowledge that the officers were investigating the car/driver and Officer Arambula attempted to have her step back. As for the excessive force claim, Officer Arambula did not use any weapon or other device such as a chemical agent and did not strike Plaintiff or take her down. He merely used his hands to put Plaintiff's arm behind her back for handcuffing. Plaintiff was handcuffed for no more than 5 minutes and Officer Arambula used his discretion to let her go with a warning. It must be remembered that Plaintiff admits to attempting to pull away from Officer Arambula when he first made contact with her. This would provide substantial support for an officer to believe the individual is not complying with the officer's directions and that the officer may need to use some force to handcuff the suspect.

There are certainly cases where a punitive damages request should be dismissed even if the court allows an underlying claim to proceed. In Ward v. City of San Jose, 967 F.2d 280 (9th Cir. 1992), the Ninth Circuit did exactly that. In Ward, several police officers shot and killed a suspect. Id. at 282. The court decided that while a trial on the fourth amendment excessive force claim was necessary, the punitive damages claim was properly dismissed. Id. at 286. The court concluded that whether the officers "responded reasonably in the moments that followed" encountering the decedent, *i.e.* shooting him, was for the jury to decide; however, there were no facts to establish a claim to punitive damages. Id. Plaintiff's desire to have someone second-guess Officer Arambula's necessarily quick decisions does not support a

claim to punitive damages even if the court allows a jury to rule on the reasonableness of his judgments.

C. PLAINTIFF'S STATE LAW ASSAULT AND BATTERY CLAIM

Plaintiff's fifth cause of action is for assault and battery. As discussed above, Plaintiff's arrest was upon probable cause and there was no excessive force used; therefore, her state law claim must also fail. Additionally, state law discretionary immunity defeats Plaintiff's assault and battery claim.[3] NRS 41.032. The Nevada Supreme Court has held that a police officer's decisions to stop and arrest a person are discretionary acts for which immunity applies. Ortega v. Reyna, 114 Nev. 55, 953 P.2d 18 (1998). The Nevada Supreme Court has further held that the manner in which a police officer handcuffs a suspect is a discretionary act for which immunity applies. Maturi v. Las Vegas Merto Police Dep't, 110 Nev. 307, 871 P.2d 932 (1994).

Pursuant to Ortega and Maturi, Nevada federal district courts have applied NRS 41.032 to police officer conduct of detaining persons and uses of force. For example, in Herrera v. Las Vegas Metro Police Dep't, 298 F.Supp.2d 1043 (D. Nev. 2004), the decedent's family brought state law claims, including wrongful death, after several escalating types of force were used against the decedent who was eventually shot and killed. Id. at 1047-48. The court applied NRS 41.032 concluding how officers approached and their decisions on how to interact with the decedent, including the uses of force, were discretionary acts. Id. at 1054; see also

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[3] Plaintiff's sixth cause of action is a respondeat superior claim against the District. That claim is dependant on the assault and battery claim so if the fifth cause of action is dismissed so must be the sixth cause of action.

Neal-Lomax v. Las Vegas Metro Police Dep't, 2006 U.S. Dist. LEXIS 49692 (D. Nev. September 14, 2006)[4] (dismissal of negligence claim pursuant to NRS 41.032 related to using a "taser" on a suspect); Kiles v. City of N. Las Vegas, 2006 U.S. Distr. LEXIS 47709 (D. Nev. July 11, 2006)[5] (dismissal of emotional distress, assault and battery claims pursuant to NRS 41.032 for detaining and use of force against individual); Chiles v. Underhill, 2006 U.S. Distr. LEXIS 25634 (D. Nev. February 16, 2006)[6] (dismissal of state law claims, including battery, pursuant to NRS 41.032 for arrest of student by school district police officer).

Plaintiff has also made a request for punitive damages under her state law claim. Exhibit 1. Punitive damages are not recoverable against the District or Officer Arambula under Nevada law. NRS 41.035(1). Therefore, the request for punitive damages under the state law claim must be dismissed.

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[4] Case No. 2:05-CV-1464-PMP (RJJ)

[5] Case No. 2:03-CV-1246-KJD (PAL)

[6] Case No. 3:05-CV-0179-LRH (RAM)

V. CONCLUSION

Based upon the above, the District and Officer Arambula respectfully request that the Court find there are no genuine issues of material fact for trial and dismiss this matter in its entirety.

DATED this 30th day of October, 2006.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: /s/
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CERTIFICATE OF ELECTRONIC FILING SERVICE

I HEREBY CERTIFY that on the 30th day of October, 2006, I electronically filed **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**, with the United States District Court, District of Nevada's CM/ECF System thereby completing service upon Plaintiff's counsel, Robert Spretnak, Esq., who is a registered Filing User.

/s/
AN EMPLOYEE OF THE CLARK COUNTY SCHOOL DISTRICT

INDEX OF EXHIBITS

1. Plaintiff's Complaint;
2. Frank Arambula deposition excerpts;
3. Roger Jacks deposition excerpts;
4. Plaintiff deposition excerpts;
5. Ken Young deposition excerpts;
6. Plaintiff's Responses to Clark County School District's Second Set of Interrogatories;
7. Affidavit of Roque Lapuz, Jr.
8. Use of Force Report (Exhibit 5 to Young deposition)